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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CALVIN WILLIAM JOHNSON,

Defendant and Appellant.

A143987

(Solano County
Super. Ct. No. FCR308182)

Calvin William Johnson appeals from a judgment convicting him of misdemeanor shop lifting. (Pen. Code, § 495.5)¹ Although the jury convicted appellant of felony second degree burglary (§ 459), the offense was reduced by the court to misdemeanor shoplifting pursuant to Proposition 47. (§ 1170.18.) Appellate jurisdiction therefore lies in this court rather than the appellate department of the superior court. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1095-1101; *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108-1111.)

Appellant's court-appointed counsel has filed a brief raising no legal issues and requesting this court to conduct an independent review pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Though advised by counsel of his right to independently file a supplemental brief in his own behalf, appellant filed no such brief.

Our review of the record revealing no arguable issues requiring briefing, we shall affirm the judgment.

¹ All statutory references are to the Penal Code unless otherwise indicated.

STATEMENT OF THE CASE

Appellant was on July 18, 2014, charged with felony second degree commercial burglary (§ 459) and felony possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) Five prior prison term enhancements were alleged pursuant to section 667.5, subdivision (b). Appellant pled not guilty.

After a pretrial hearing pursuant to Evidence Code section 402, the trial court ruled that it would exclude evidence about events occurring prior to the date of the alleged crimes. A two-day jury trial commenced on September 17, 2014. The district attorney announced that the People would not proceed on the prior prison term allegations. On September 18, the jury returned a verdict of guilty of second degree burglary and not guilty of possession of a controlled substance.

After the sentencing hearing on November 10, 2014, the court found appellant ineligible for probation but granted his request to reduce the burglary conviction to a misdemeanor pursuant to section 1170.18. The court sentenced appellant to one year in county jail. He was awarded 143 days of credit for time served and 143 days of earned credits for a total of 286 days of presentence credits. Customary fines and fees were imposed, including a \$150 restitution fine.

FACTS AND PROCEEDINGS BELOW

Prior to trial, Hilary Turner, who participated in the charged burglary with appellant, pled guilty to second degree burglary. Her plea was not part of a bargain with the prosecution, but she later testified as a prosecution witness after being granted immunity.

Turner testified that on June 24, 2014, she, appellant, and Lasharita Mercado drove from Sacramento to the Costco store in Vacaville with the intention of stealing cameras. Turner's role was to conceal the cameras selected by appellant and Mercado and take them from the store. After entering the store, Turner, who was a large person, obtained a motorized cart for the use of disabled customers which had a large basket in front and drove the cart to the camera section of the store, followed by appellant and Mercado.

Apparently alerted by others to the presence of the three in the store, Assistant Store Manager and Loss Prevention Officer Jim Phillips located and surreptitiously followed them starting about five minutes after they entered the store. After watching appellant and Mercado randomly pick up towels, coffee and juice and place them in the basket of Turner's cart, Phillips saw two cameras, a Fuji and a Nikon, also in the basket. Both were packaged in a plastic "clamshell" that could not be opened without a sharp instrument. In the pickle aisle of the store, Phillips saw appellant take the packaged cameras from the cart and, with Turner's assistance, begin to cut open the plastic clamshell packaging "with a small cutting device." The cameras were both placed in Turner's large purse. After Mercado joined appellant and Turner, appellant put the empty plastic clamshells in a food trash recycling bin, from which Phillips later retrieved them.

At trial, Phillips authenticated surveillance videos of appellant, Turner and Mercado entering the store and leaving about 35 minutes later, appellant and Mercado selecting the Nikon and Fuji cameras from the shelf, placing them in the basket of the cart Turner was driving, and placing the remains of the camera packaging in a recycling bin.

Around 4:25 p.m., while appellant, Turner, and Mercado were still in the Costco store, Vacaville Police Officer Michael Miller received a call from the store informing him that three suspects were then in the process of stealing cameras, and given their descriptions. About 32 minutes after they entered the store, the three suspects went to leave without paying for the cameras and were allowed to do so. When they got outside, the three each walked away in different directions after observing Officer Miller's patrol car. When appellant picked up his pace and started to jog or trot, Officer Miller followed in his vehicle and ordered appellant to stop. Miller also testified that while Mercado and Turner were weaving in between parked cars, they periodically ducked and appeared to be throwing something beneath parked cars. Mercado, who had also commenced to trot through the parking lot, was stopped by Officer Daniel Valk. Valk testified that he saw Mercado move between two Honda Pilot SUVs parked adjacent to one another, one of

which was silver and the other gold. He discovered a cardboard box for a Fuji XP70 camera on top of the left rear tire well of the gold Honda Pilot and an XP70 Fuji camera under the left rear tire of the silver Honda Pilot.

All three suspects were detained and arrested in the parking lot. Assistant Store Manager Phillips identified appellant as the male suspect he had reported to the police and identified Turner and Mercado as the coparticipants he had also observed.

Using a key found in Turner's purse, Officer Julie Bailey opened a van parked nearby. Inside the van she found two backpacks, one of them blue and white, the other brown plaid, and several other luggage bags. Inside the blue and white backpack Officer Bailey found a leather wallet containing appellant's social security card and a pack of Newport cigarettes containing "a plastic twist-off" holding a grainy, crystal substance later determined to be 19 grams of methamphetamine. Turner testified that the blue and white backpack was hers and the brown plaid one belonged to appellant. Turner said she was taking the methamphetamine to a friend. She also stated that she smokes Newport cigarettes and appellant does not.

Conducting a pat search of appellant for weapons, Officer Miller found and seized a rainbow-colored pocket knife in appellant's pocket. A search of Turner's large purse disclosed two digital camera boxes, a digital Nikon camera, a black leather camera case and a woman's dress. Another Nikon camera was found on Turner at her waist, partially hidden in the folds of her skin. According to Phillips, the Assistant Store Manager, the value of the cameras was \$700 to \$750.

Appellant did not testify and rested without presenting any evidence.

As earlier noted, the jury found appellant guilty of second degree burglary and not guilty of possession of a controlled substance.

DISCUSSION

Based on our review of the record, we conclude as follows: Appellant was at all times represented by competent counsel who assiduously protected his rights and interests; the verdict reached by the jury is supported by substantial evidence; no evidence was admitted that should have been excluded and no evidence was excluded

that should have been admitted; the jury was properly instructed on the law by the court; there was no prosecutorial or jury misconduct; and the sentence imposed on appellant was lawful.

No arguable issues of any other sort are presented that require briefing.

Accordingly, the judgment is affirmed.

Kline, P.J.

We concur:

Richman, J.

Stewart, J.

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